

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Petition of the California Public Utilities)	
Commission and the People of the State of)	
California for Waiver of the Federal)	
Communication Commission's)	
Contamination Threshold)	

COMMENTS OF WORLDCOM, INC.

Pursuant to public notice DA 02-2822 (rel. Oct. 24, 2002), WorldCom, Inc. ("WorldCom") respectfully submits these comments on the petition of the California Public Utilities Commission ("CPUC") and the People of the State of California for waiver of the Federal Communication Commission's ("Commission") contamination threshold (filed Sept. 5, 2002).

Over the past several years, the CPUC has undertaken extraordinary efforts to avoid or delay the implementation of area code relief in California. While WorldCom has not agreed with all of the measures undertaken by the CPUC, including the establishment of virtually permanent number lotteries, WorldCom recognizes the important role that the CPUC has played in leading and fostering more efficient utilization of numbering resources. Nonetheless, the instant petition is consistent with neither law nor sound public policy. Accordingly, WorldCom recommends that the Commission deny the CPUC's petition for waiver.

I. Background

In 1999, the Commission was faced with an immediate crisis in the unprecedented acceleration of area code exhaust, and the possibility of an imminent catastrophe by the premature exhaustion of the North American Numbering Plan (“NANP”) within a decade.¹ In response, the Commission implemented a series of administrative and technical measures designed to achieve more efficient utilization of numbering resources.² Along with other factors, including a sharp drop in the number of new entrants seeking initial resources to establish a service footprint, the measures that the Commission adopted have met with considerable success. The current rate of area code exhaust is a fraction of what it was in 1999. And projected NANP exhaust is now several decades in the future.

One of the optimization measures that the Commission adopted was national thousands block number pooling.³ In adopting national thousands block number pooling, the Commission established a uniform framework for pooling, including technical standards and pooling administration provisions.⁴ Prior and subsequent to the adoption of the framework for and rollout of national thousands block number pooling, the Commission delegated authority to implement pooling to individual states.⁵ In each delegation and in the *First NRO Order*, the Commission made it clear that its uniform national standards and provisions for thousands block number pooling would supersede

¹ For a discussion of this situation, see *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200, Notice of Proposed Rulemaking (rel. June 2, 1999), ¶ 5.

² See, e.g., *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order* (“*First NRO Order*”) (rel. March 31, 2000).

³ *Id.*, ¶ 122.

⁴ *Id.*, ¶ 169.

⁵ See, e.g., *California Delegation Order*, 14 FCC Rcd 17485.

all interim delegations of authority to state commissions.⁶ The Commission explicitly found that a nationally uniform framework for thousands block number pooling was “necessary to minimize the confusion and additional expense related to compliance with inconsistent regulatory requirements.”⁷

As part of its uniform framework for thousands block number pooling, the Commission required all carriers to donate all thousands-blocks that have a less than ten-percent contamination level to the pool for the rate center from which the numbering resources are assigned.⁸ In so doing, the Commission implicitly rejected recommendations of state commissions, including the CPUC, that sought additional flexibility for states to increase the contamination threshold “depending on circumstances particular to that state.”⁹

II. The CPUC Petition

The CPUC now seeks a waiver of the Commission’s uniform contamination rule.¹⁰ In particular, the CPUC wants discretion to increase the contamination threshold to 25 percent.¹¹ The CPUC asserts that by increasing the contamination threshold to 25 percent, additional blocks can be donated to active number pools thereby promoting the Commission’s goal of more efficient number allocation and usage.¹² According to the CPUC, “the uniqueness of California’s numbering situation along with the fact that increasing the contamination threshold will augment the quantity of numbers that are returned to the pool,” constitutes “good cause” for waiver of otherwise uniform, national

⁶ *See, e.g., Id.* at 17490-96.

⁷ *First NRO Order* at ¶ 169.

⁸ *Id.* at ¶ 191. “Contamination” occurs when one or more telephone numbers within a thousands-block is not available for donation to the pool, typically because it has already been assigned to an end user.

⁹ *Id.* at footnote 463.

¹⁰ CPUC Petition at 1.

¹¹ *Id.*

rules.¹³ The CPUC also points to “California’s severe shortage of available numbers to meet growing customer needs,” as special circumstances that warrant deviation from the Commission’s national rules.¹⁴

A. The CPUC has not shown that a waiver would promote the public policy goals served by a uniform contamination level.

The Commission may find good cause to waive a rule when the presence of unusual circumstances makes strict compliance with the rule inconsistent with the public interest.¹⁵ Here, the CPUC cites the “uniqueness of California’s numbering situation,” and “California’s severe number shortage” as the unusual circumstances that warrant deviation from the general rule. Yet the CPUC has not even identified the manner in which the Commission national pooling framework promotes the public interest. Nor has the CPUC discussed how a waiver is consistent with the public interest goals that the Commission sought to promote in establishing uniform standards and provisions.

According to the CPUC, its proposal “furthers the original purpose of the rule by retrieving additional numbering resources and returning them to the pool for carrier use, both of which are goals currently sought under the present threshold amount.”¹⁶ The CPUC is simply wrong. The original purpose of the Commission’s decision to adopt a uniform contamination level that could not be varied by individual state commissions, was not to promote the retrieval of additional numbering resources.¹⁷ The Commission

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁶ CPUC Petition at 3.

¹⁷ All of the Commission’s optimization measures were adopted to promote more optimal use of numbering resources. But the Commission decided to make the standards associated with its optimization measures uniform throughout the country to promote an entirely different goal.

found that uniform standards were necessary to minimize confusion and additional expense associated with inconsistent regulatory requirements.

The CPUC has completely ignored the actual public policy goal behind the requirement of a uniform contamination threshold. Thus, the CPUC has failed to explain how waiver of that requirement would promote the Commission's goal of minimizing the confusion and expense associated with inconsistent regulatory requirements. Indeed, the CPUC is utterly silent on this question, and with good reason. The CPUC could not possibly show special circumstances that justify waiving a requirement the Commission found *necessary* to promote an important goal of public policy.

Read in the best possible light, the CPUC's petition argues that, in balancing the goals of minimizing the confusion and expense associated with inconsistent regulatory requirements and maximizing the number of blocks recovered for rate center pools, the Commission erred by requiring uniform standards. But such an argument cannot be the basis for granting a waiver. This is an argument that the general rule be scrapped, not waived. In fact, the CPUC's petition would be more correctly labeled a petition for reconsideration than for waiver. As such, it is late-filed and time-barred.¹⁸ In fact, the CPUC filed a petition for reconsideration of certain aspects of the *First NRO Order*. At that time, the CPUC did not think it necessary for the Commission to revisit its decision to require a uniform contamination level. The Commission should not allow the CPUC to supplement that petition at this late date.

B. The CPUC has not shown the presence of special circumstances.

Even if the CPUC had correctly identified and addressed the public policy goal served by a uniform contamination level, a waiver would still be inappropriate. The only

“special circumstances” that the CPUC has alleged are California’s “unique” numbering situation, and California’s “severe” shortage of numbers. Neither of these would justify waiving the requirement of nationwide pooling standards.

The CPUC’s petition does not demonstrate anything unique about California’s numbering situation. It is probably true that any increase in the contamination threshold would result in the recovery of some additional blocks. But there is no reason to believe that this is truer in California than in other states. There are undoubtedly other state commissions that would like to try to delay area code relief by obtaining more block donations. The CPUC has failed to explain why it deserves special treatment.

Insofar as there is a number shortage in California it is not the result of any failure in the policies of this Commission to optimize number resource usage. California’s number shortage exists because the CPUC has sought to extend the life of NPAs far past the point at which they are in fact exhausted. By rationing numbers, the CPUC has artificially delayed the implementation of area code relief and thus created the very shortage that it now cites as a justification for waiving the Commission’s rules.

Ironically, the CPUC already has all the authority that it needs to address any number shortages in California. Pursuant to 47 C.F.R. § 52.19, the CPUC has authority to implement area code relief and thus ensure the availability of sufficient telephone numbers to meet demand. Moreover, the Commission has consistently emphasized that states may not engage in number conservation measures to the exclusion of unavoidable area code relief.¹⁹ The Commission’s efforts to obtain more efficient use of numbering

¹⁸ 47 C.F.R. § 1.429(d).

¹⁹ See, e.g., *Multistate Delegation Order*, CC Docket No. 99-200 (rel. July 20, 2000), ¶ 11.

resources have been substantial. But those efforts were not intended and cannot substitute for relief of NPAs that will inevitably exhaust.

C. Granting this petition would not delay NANP exhaust, and would barely delay NPA exhaust.

Numbering optimization measures such as pooling can serve both to prevent premature NPA exhaust, and to extend the life of the NANP.²⁰ But adjusting the contamination level will have, at most, a trivial impact on the life of the NANP and will do little to prevent premature NPA exhaust in California.

NANP exhaust will occur when the last available NPA is assigned. Increasing the contamination level in California will have no impact on this event, unless that last NPA is destined to relieve an NPA whose life is extended by the increased contamination level. The North American Numbering Council undertook an analysis of the impact of changing the contamination level in California from 10 to 25 percent.²¹ Under two separate sets of assumptions, the NANC estimated the impact on the lives of California NPAs of increasing the contamination threshold to 25 percent. Even under the assumptions most favorable to the CPUC, NPA life would be extended by only 1-29 months. Under assumptions that some members of the NANC found more relevant, NPA life would be extended by 0-3 months.²² Thus, even if the last NPA in the NANP were assigned to relieve the California NPA whose life was most extended by increasing the contamination threshold, it would result in less than three years of delay in NANP exhaust. This outcome is highly unlikely. And the benefit, in terms of delayed NANP exhaust, would be trivial.

²⁰ See, e.g., *First NRO Order* at ¶ 3.

²¹ Report on the Technical Viability of Increasing the Pooling Contamination Threshold (“NANC Report”) (filed December 11, 2002).

The NANC Report also shows that increasing the contamination level would barely extend the lives of most California NPAs. Even under the assumptions most favorable to the CPUC, the mean expected extension in NPA life is only 9 months.²³ The NANC Report also identifies numerous carrier operations and costs that would be impacted by increasing the contamination threshold in California.²⁴ The Commission should not sacrifice the benefits of uniform, national rules for less than a year's delay in area code relief.

III. Conclusion

The Commission correctly found that uniform national pooling rules were necessary to minimize the cost and confusion associated with inconsistent regulatory requirements. The CPUC now asks the Commission to jettison the benefits of uniform national rules so that it can wring a few drops of additional life out of NPAs that will inevitably exhaust. The Commission should deny this petition and preserve the benefits of its nationwide rules.

Respectfully submitted,

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²² *Id.* at 2-3.

²³ *Id.* at table 2.

²⁴ *Id.* at 6-7.